

EXHIBIT 40



Transcript of Amber D. Compton

Date: December 16, 2016

Case: Corcoran, et al. -v- CVS Pharmacy, Inc.

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Conducted on December 16, 2016

1 (1 to 4)

<p style="text-align: center;">1 2 UNITED STATES DISTRICT COURT 3 NORTHERN DISTRICT OF CALIFORNIA 4 5 CHRISTOPHER CORCORAN, et al., 6 Plaintiffs, 7 vs. 8 CVS PHARMACY, INC., 9 Defendant. 10 11 12 13 14 VIDEO-RECORDED DEPOSITION OF AMBER D. COMPTON 15 TAKEN ON BEHALF OF THE PLAINTIFFS 16 DECEMBER 16, 2016 17 18 19 20 (Starting time of the deposition: 9:32 a.m.) 21 22 23 24 25</p>	<p style="text-align: center;">3 1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 CHRISTOPHER CORCORAN, et al., 5 Plaintiffs, 6 vs. 7 CVS PHARMACY, INC., 8 Defendant. 9 10 VIDEO-RECORDED DEPOSITION OF AMBER D. COMPTON, 11 produced, sworn and examined on December 16, 2016, 12 between the hours of nine o'clock in the forenoon 13 and noon of that day, at the offices of Bryan Cave 14 LLP, One Metropolitan Square, 211 North Broadway, 15 Suite 3600, St. Louis, Missouri 63102-2750, before 16 William L. DeVries, a Certified Court Reporter (MO), 17 Certified Shorthand Reporter (IL), Registered 18 Diplomate Reporter, and Certified Realtime Reporter, 19 in a certain cause now pending in the United States 20 District Court, Northern District of California, 21 between CHRISTOPHER CORCORAN, et al., Plaintiffs, 22 vs. CVS PHARMACY, INC., Defendant; on behalf of the 23 Plaintiffs. 24 25</p>
<p style="text-align: center;">2 1 I N D E X 2 QUESTIONS BY: PAGE 3 MR. GILMORE 7 4 MS. MAINIGI 90 5 MR. SITARCHUK 92 6 MR. GILMORE 93 7 8 9 E X H I B I T S 10 EXHIBIT PAGE 11 Exhibit 613 Subpoena 8 12 Exhibit 618 Declaration of Amber D. 13 13 Compton 14 Exhibit 532 CVS/Express Scripts provider 65 15 contract 16 Exhibit 617 2008 Express Scripts Network 69 17 Provider Manual 18 Exhibit 615 2010 Express Scripts Network 71 19 Provider Manual 20 Exhibit 616 2016 Express Scripts Network 76 21 Provider Manual 22 Exhibit 619 August 10, 2016 complaint 81 23 24 (The exhibits were retained by the court reporter to 25 be attached to the original and copies of the transcript.)</p>	<p style="text-align: center;">4 1 A P P E A R A N C E S 2 For the Plaintiffs: 3 Mr. Robert B. Gilmore 4 Stein Mitchell Cipollone Beato & Missner LLP 5 1100 Connecticut Avenue, NW, Suite 1100 6 Washington, D.C. 20036 7 (202) 601-1589 8 rgilmore@steinmitchell.com 9 10 For the Defendant: 11 Mr. Enu Mainigi 12 Williams & Connolly LLP 13 725 Twelfth Street, N.W. 14 Washington, D.C. 20005 15 (202) 434-5000 16 emainigi@wc.com 17 18 For the Witness: 19 Mr. Eric W. Sitarchuk 20 Morgan, Lewis & Bockius LLP 21 1701 Market Street 22 Philadelphia, Pennsylvania 19103-2921 23 (215) 963-5000 24 eric.sitarchuk@morganlewis.com 25</p>

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14 (53 to 56)

<p>53</p> <p>1 just said?</p> <p>2 MS. MAINIGI: Objection.</p> <p>3 A. No. I don't have any membership -- any</p> <p>4 contractual agreement where a membership program</p> <p>5 would be included in the definition of usual and</p> <p>6 customary.</p> <p>7 Q. (By Mr. Gilmore) Let's turn to</p> <p>8 paragraph eleven in your declaration. You say</p> <p>9 (quote as read):</p> <p>10 In my experience, there was general</p> <p>11 awareness in the marketplace that</p> <p>12 pharmacies with a membership program</p> <p>13 were not reporting the membership</p> <p>14 program prices as usual and customary</p> <p>15 prices.</p> <p>16 What's your basis to say there was</p> <p>17 general awareness?</p> <p>18 A. The -- the programs were public</p> <p>19 programs. They were available knowledge wise</p> <p>20 through the press releases that we've discussed, and</p> <p>21 my understanding, my position is that like Express</p> <p>22 Scripts they were generally excluded from usual and</p> <p>23 customary prices. General understanding. Again, I</p> <p>24 don't have detailed knowledge. It's just a general</p> <p>25 statement.</p>	<p>55</p> <p>1 price, fair?</p> <p>2 MS. MAINIGI: Objection.</p> <p>3 A. That is fair. I can't point to</p> <p>4 anything.</p> <p>5 Q. (By Mr. Gilmore) Nor can you point us</p> <p>6 to any written communication occurring at the time</p> <p>7 that says, from Express Scripts to CVS, Express</p> <p>8 Scripts knows you're not submitting this as the</p> <p>9 usual and customary price and Express Scripts agrees</p> <p>10 with that? You can't point us to any document that</p> <p>11 says that, right?</p> <p>12 MS. MAINIGI: Objection.</p> <p>13 A. That's correct.</p> <p>14 Q. (By Mr. Gilmore) Turn to paragraph 17</p> <p>15 of your declaration. You say (quote as read):</p> <p>16 I was aware that CVS was not submitting</p> <p>17 to Express Scripts the membership</p> <p>18 program prices as CVS's U&C price on</p> <p>19 prescription drug claims.</p> <p>20 Did I read that correctly?</p> <p>21 A. You did, yes.</p> <p>22 Q. How did you become aware of that?</p> <p>23 A. Again, we -- I viewed the membership</p> <p>24 program as being outside of the Express Scripts CVS</p> <p>25 contract. Wouldn't have expected them to be part of</p>
<p>54</p> <p>1 Q. Did you talk with employees at other</p> <p>2 PBMs in which those employees at other companies</p> <p>3 said they also were -- knew that pharmacies were not</p> <p>4 submitting these membership program prices as usual</p> <p>5 and customary prices?</p> <p>6 A. No, I would --</p> <p>7 MS. MAINIGI: Objection.</p> <p>8 A. I would have not spoken with other PBMs</p> <p>9 regarding this or any contract term.</p> <p>10 Q. (By Mr. Gilmore) Do you recall any</p> <p>11 communication to you from someone at CVS saying</p> <p>12 something to the effect of, Amber, CVS is not going</p> <p>13 to submit its Health Savings Pass prices at its</p> <p>14 usual and customary prices?</p> <p>15 A. No, I do not recall that conversation</p> <p>16 or a conversation.</p> <p>17 Q. Are you aware of anyone at CVS having</p> <p>18 that kind of conversation with anyone else besides</p> <p>19 you at Express Scripts?</p> <p>20 A. I'm not, no.</p> <p>21 Q. And you can't point us to a letter or</p> <p>22 e-mail or any other written communication between</p> <p>23 anyone at Express Scripts and anyone at CVS</p> <p>24 reflecting that CVS is not going to submit its</p> <p>25 Health Savings Pass price as its usual and customary</p>	<p>56</p> <p>1 the contract or claims adjudication to Express</p> <p>2 Scripts.</p> <p>3 Q. Putting aside that you didn't expect</p> <p>4 CVS to submit these prices, what did you do or learn</p> <p>5 to in fact know that CVS was not submitting to</p> <p>6 Express Scripts the membership prices as CVS's usual</p> <p>7 and customary prices?</p> <p>8 MR. SITARCHUK: Objection to form.</p> <p>9 MS. MAINIGI: Join.</p> <p>10 A. I'm not sure I understand what you're</p> <p>11 asking.</p> <p>12 Q. (By Mr. Gilmore) So I heard you say</p> <p>13 that you didn't expect CVS to submit the HSP prices</p> <p>14 at CVS's usual and customary prices. In paragraph</p> <p>15 17 you say you were aware that CVS was not doing</p> <p>16 that. I'm just trying to understand what you did to</p> <p>17 get that knowledge? Did you look at data? Did you</p> <p>18 look at some kind of communication, some -- any</p> <p>19 information or something that would in fact confirm</p> <p>20 for you at the time CVS is not submitting these</p> <p>21 prices as its usual and customary prices?</p> <p>22 A. Well, pursuant to the contract U -- U&C</p> <p>23 is a defined term within our contract. I had taken</p> <p>24 a position that these programs were outside of their</p> <p>25 usual and customary pricing and wouldn't be subject</p>

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17 (65 to 68)

<p>65</p> <p>1 MR. SITARCHUK: Objection to form.</p> <p>2 MS. MAINIGI: Join.</p> <p>3 A. The way we have the term defined</p> <p>4 pursuant to our contract with CVS.</p> <p>5 Q. (By Mr. Gilmore) In your declaration</p> <p>6 in paragraphs 15 and 16 you refer to a January 25th,</p> <p>7 2008 pharmacy provider agreement between Express</p> <p>8 Scripts and CVS, right?</p> <p>9 A. Correct.</p> <p>10 (WHEREIN, Exhibit 532, CVS/Express</p> <p>11 Scripts provider contract, was marked for</p> <p>12 identification.)</p> <p>13 Q. (By Mr. Gilmore) Let me hand you</p> <p>14 what's been marked as Plaintiffs' Exhibit 532. You</p> <p>15 can take a moment or a few moments if you like to</p> <p>16 look through it. I first want to ask you is do you</p> <p>17 know whether this is the agreement that you were</p> <p>18 referencing?</p> <p>19 A. Yes.</p> <p>20 Q. Your declaration includes a definition</p> <p>21 of usual and customary retail price that you say is</p> <p>22 present in the contract, right?</p> <p>23 A. Yes.</p> <p>24 Q. And if we turn to -- in Plaintiffs'</p> <p>25 Exhibit 532, the CVS/Express Scripts provider</p>	<p>67</p> <p>1 contain an exception for discounts, promotions, or</p> <p>2 offers that involve membership programs, right?</p> <p>3 MR. SITARCHUK: Objection to form.</p> <p>4 MS. MAINIGI: Join.</p> <p>5 A. Correct.</p> <p>6 Q. (By Mr. Gilmore) Nor does this</p> <p>7 definition include exceptions for discounts,</p> <p>8 promotions, or offers that require a fee to receive</p> <p>9 those discounts. Am I right?</p> <p>10 MS. MAINIGI: Objection to form.</p> <p>11 MR. SITARCHUK: Objection to form.</p> <p>12 Q. (By Mr. Gilmore) Doesn't say that in</p> <p>13 the language here?</p> <p>14 A. Doesn't say that, correct.</p> <p>15 Q. So if any -- any person reading this</p> <p>16 and not having read your declaration wouldn't know</p> <p>17 that discounts through a membership program are</p> <p>18 excluded from what Express Scripts believes are</p> <p>19 usual and customary retail price?</p> <p>20 MR. SITARCHUK: Objection to form.</p> <p>21 MS. MAINIGI: Join.</p> <p>22 Q. (By Mr. Gilmore) Fair? You're not</p> <p>23 going to be able to glean that from just reading</p> <p>24 this definition, are you?</p> <p>25 MR. SITARCHUK: Objection to form.</p>
<p>66</p> <p>1 contract, there's a Bates number at the bottom</p> <p>2 325309. It's page three of the contract itself.</p> <p>3 Are you there?</p> <p>4 A. Yes.</p> <p>5 Q. Section 1.17 there is the definition of</p> <p>6 usual and customary retail price, right?</p> <p>7 A. Yes.</p> <p>8 Q. And that reads (quote as read):</p> <p>9 Means that -- usual and customary</p> <p>10 retail price means the usual and</p> <p>11 customary retail price of a covered</p> <p>12 medication in a cash transaction at the</p> <p>13 pharmacy dispensing the covered</p> <p>14 medication in the quantity dispensed on</p> <p>15 the date that it is dispensed,</p> <p>16 including any discounts or special</p> <p>17 promotions offered on such date.</p> <p>18 Did I read all that correctly?</p> <p>19 A. Yes, you did.</p> <p>20 Q. And it refers to any discounts or</p> <p>21 special promotions offered on such date must be</p> <p>22 included in the usual and customary price a pharmacy</p> <p>23 submits, right?</p> <p>24 A. Yes.</p> <p>25 Q. The language here in 1.17 does not</p>	<p>68</p> <p>1 MS. MAINIGI: Join.</p> <p>2 A. It's not stated. Membership program is</p> <p>3 not stated.</p> <p>4 Q. (By Mr. Gilmore) Do you know whether</p> <p>5 any Express Scripts clients are aware of the</p> <p>6 definition of usual and customary retail price</p> <p>7 that's in this main agreement, the provider</p> <p>8 agreement?</p> <p>9 A. No, I'm not aware.</p> <p>10 Q. Express Scripts has sort of a template</p> <p>11 provider agreement that it issues publicly, right?</p> <p>12 MS. MAINIGI: Objection.</p> <p>13 A. Not publicly. Issues to pharmacies</p> <p>14 upon an application of the credentialing process.</p> <p>15 Q. (By Mr. Gilmore) Do you know whether</p> <p>16 it's publicly available?</p> <p>17 A. It is not.</p> <p>18 Q. Has it ever been publicly available?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. This kind of agreement is similar to</p> <p>21 ones that Express Scripts has with respect to public</p> <p>22 programs like Medicare and Medicaid, right?</p> <p>23 MS. MAINIGI: Objection to form.</p> <p>24 A. No --</p> <p>25 MR. SITARCHUK: Join.</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 A. No.</p> <p>2 Q. So do you have any knowledge of what</p> <p>3 was said to Medicare or TRICARE -- Medicare part D</p> <p>4 or TRICARE either way?</p> <p>5 A. No.</p> <p>6 MR. SITARCHUK: That's all I have.</p> <p>7 Thank you.</p> <p>8 FURTHER EXAMINATION</p> <p>9 QUESTIONS BY MR. GILMORE:</p> <p>10 Q. Are you aware of the existence of any</p> <p>11 investigations of Express Scripts by Medicare part D</p> <p>12 or TRICARE or any other government agency relating</p> <p>13 to usual and customary pricing?</p> <p>14 MR. SITARCHUK: And I'd object and</p> <p>15 instruct you not to answer to the extent if any that</p> <p>16 would call for communications with counsel, but if</p> <p>17 you have any awareness other than that, please</p> <p>18 answer the question.</p> <p>19 A. No, I don't have any awareness.</p> <p>20 Q. (By Mr. Gilmore) Are you aware of any</p> <p>21 litigation that Express Scripts has been involved in</p> <p>22 regarding the usual and customary pricing that</p> <p>23 pharmacies submit?</p> <p>24 MR. SITARCHUK: Same instruction.</p> <p>25 A. No, not aware.</p>	<p style="text-align: right;">95</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, William L. DeVries, a Certified</p> <p>4 Court Reporter (MO), Certified Shorthand Reporter</p> <p>5 (IL), Registered Diplomate Reporter, and a Certified</p> <p>6 Realtime Reporter, do hereby certify that the</p> <p>7 witness whose testimony appears in the foregoing</p> <p>8 deposition was duly sworn by me pursuant to Section</p> <p>9 492.010 RSMo; that the testimony of said witness was</p> <p>10 taken by me to the best of my ability and thereafter</p> <p>11 reduced to typewriting under my direction; that review</p> <p>12 was not requested; that I am neither counsel for, related</p> <p>13 to, nor employed by any of the parties to the action</p> <p>14 in which this deposition was taken, and further that I</p> <p>15 am not a relative or employee of any attorney or counsel</p> <p>16 employed by the parties thereto, nor financially or</p> <p>17 otherwise interested in the outcome of the action.</p> <p>18</p> <p>19 <i>William L. DeVries</i></p> <p>20 _____</p> <p>21 Certified Court Reporter</p> <p>22 within and for the State of Missouri</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">94</p> <p>1 Q. (By Mr. Gilmore) Are you aware of any</p> <p>2 litigation that Express Scripts has been involved in</p> <p>3 regarding pharmacies' discount membership programs?</p> <p>4 MR. SITARCHUK: Same instruction.</p> <p>5 A. No, not aware.</p> <p>6 MR. GILMORE: No further questions.</p> <p>7 MS. MAINIGI: Nothing for me. Thank</p> <p>8 you.</p> <p>9 MR. SITARCHUK: We're done.</p> <p>10 VIDEOGRAPHER: We're going off the</p> <p>11 record at approximately 11:41 a.m.</p> <p>12 (WHEREIN, the deposition was concluded</p> <p>13 at 11:41 a.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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